

ORIGINAL

- V. -

Defendant .

INDICTMENT

06 Cr.

06 CRIM. 912

(False and Fraudulent Claims)

The Grand Jury charges:

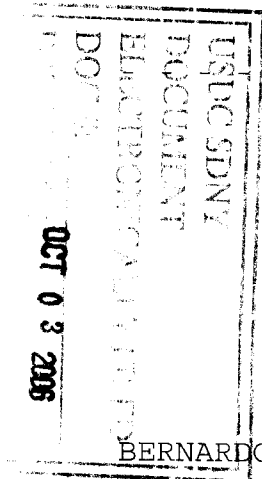
Background

1. At all relevant times to this Indictment,

BERNARDO A. APONTE, the defendant, resided at 1405 White Plains Road, Bronx, New York.

2. Individuals report income on a U.S. Individual Income Tax Return, Form 1040, which must be filed with the Internal Revenue Service ("IRS"). The income that individuals must report on this form includes, among other things, wages and non-employee compensation paid to individuals by third parties for work or services performed.

3. IRS Form 1099 ("Miscellaneous Income"), similar in purpose to IRS Form W-2 ("Wage and Tax Statement"), is a form prepared by third-party payers documenting compensation and other income paid to non-employee workers (such as independent contractors) and other payees.



4. The Earned Income Tax Credit ("EITC"), sometimes called the Earned Income Credit ("EIC"), is a refundable federal income tax credit for low-income working individuals and families. When the EITC exceeds the amount of taxes owed, it results in a tax refund to those who claim and qualify for the credit. To qualify for the EITC, one of the threshold requirements is that the taxpayer's adjusted gross income be under a certain amount.

The Fraud Scheme

5. Beginning in or about March 2003, and continuing through at least November 2003, BERNARDO A. APONTE, the defendant, used, without lawful authority, the identities of unsuspecting individuals to prepare, file, and cause to be filed false and fictitious income tax returns claiming fraudulent refunds. The fraudulent individual tax returns filed with the IRS reported minimal adjusted gross income, claimed the EITC, and, thus, requested a refund from the IRS.

6. Each of the fraudulent returns filed with the IRS asserted that the individual named in the return earned income from a third-party payer. Filed with each return was a Form 1099, purportedly documenting the compensation earned by the named individual, and the purported third-party from whom such compensation was received.

7. In truth, the individuals named in the returns never worked for the purported third-party payors, never earned income as reflected in the Form 1099s, and never filed, or directed others to file, the purported tax returns filed with the IRS in their names. The U.S. Individual Tax Returns and the accompanying 1099 forms were part of the scheme to obtain fraudulent refunds from the IRS.

8. Each fraudulent return that the defendant, BERNARDO A. APONTE, caused to be filed, and aided and abetted in filing, utilized the EITC as the vehicle by which a payment from the IRS would be obtained. By reporting minimal adjusted gross income, and by claiming dependent children on each return, the individual named in the return was purportedly entitled to claim the EITC. Because the returns reported minimal taxes due, that is, in an amount less than the EITC claimed, the individual named in the return was purportedly entitled to a refund check from the IRS.

9. In order to ensure that he would receive any refunds issued by the IRS, rather than the individual in whose name the return was filed, BERNARDO A. APONTE, the defendant, also listed on the returns addresses to which he had access, and to which he knew the fraudulent refund checks would be sent.

10. The defendant was successful in obtaining refund checks from the IRS with respect to some of the fraudulent returns he caused to be filed. Defendant obtained at least

seventeen refund checks which together totaled \$31,165, depositing these fraudulently-obtained refund checks into bank accounts which he controlled.

Statutory Allegations

11. On or about the dates set forth below, in the Southern District of New York, and elsewhere, BERNARDO A. APONTE, the defendant, unlawfully, willfully and knowingly did make and present, and did aid and abet in the making and presenting, to a person and officer in the civil service of the United States and to a department and agency thereof, to wit, the IRS, claims upon and against the United States and the IRS, knowing such claims to be false, fictitious and fraudulent, to wit, defendant BERNARDO A. APONTE made, filed, and caused to be filed with the IRS, false and fraudulent U.S. Individual Income Tax Returns, Forms 1040, on or about the dates set forth below, using the names of the individuals listed below, which returns claimed refunds in the amounts set forth below:

<u>COUNT</u>	<u>DATE FILED</u>	<u>NAME ON RETURN</u>	<u>REFUND CLAIMED</u>
1	4/9/2003	Individual 1	\$2,219
2	11/18/2003	Individual 1	\$2,505
3	3/8/2003	Individual 2	\$2,476
4	4/15/2003	Individual 3	\$2,347
5	4/15/2003	Individual 3	\$2,192
6	4/20/2003	Individual 3	\$2,374
7	4/13/2003	Individual 4	\$2,219
8	4/9/2003	Individual 5	\$2,219

<u>COUNT</u>	<u>DATE FILED</u>	<u>NAME ON RETURN</u>	<u>REFUND CLAIMED</u>
9	4/13/2003	Individual 6	\$2,219
10	4/13/2003	Individual 7	\$2,219
11	3/8/2003	Individual 8	\$2,544
12	4/12/2003	Individual 9	\$2,219
13	4/9/2003	Individual 10	\$2,219
14	4/10/2003	Individual 11	\$2,219
15	4/9/2003	Individual 12	\$2,219
16	11/21/2003	Individual 13	\$1,365
17	3/8/2003	Individual 13	\$1,365
18	3/22/2003	Individual 14	\$1,131
19	3/14/2003	Individual 14	\$2,221
20	4/20/2003	Individual 14	\$2,413
21	4/10/2003	Individual 15	\$2,219
22	3/7/2003	Individual 16	\$2,556
23	4/10/2003	Individual 17	\$2,219
24	4/11/2003	Individual 18	\$2,219
25	4/10/2003	Individual 19	\$2,219
26	4/12/2003	Individual 20	\$2,219
27	4/10/2003	Individual 21	\$2,219
28	3/7/2003	Individual 22	\$2,297
29	4/13/03	Individual 23	\$2,219
30	3/17/03	Individual 24	\$2,234
31	3/12/03	Individual 24	\$2,306
32	3/16/03	Individual 24	\$1,312
33	3/20/03	Individual 25	\$2,177
34	3/18/03	Individual 25	\$2,427
35	4/9/03	Individual 26	\$2,219
36	3/21/03	Individual 27	\$2,022

<u>COUNT</u>	<u>DATE FILED</u>	<u>NAME ON RETURN</u>	<u>REFUND CLAIMED</u>
37	3/21/03	Individual 27	\$2,108
38	3/21/03	Individual 27	\$2,413
39	3/21/03	Individual 27	\$2,505
40	4/09/03	Individual 28	\$2,219
41	4/9/03	Individual 29	\$2,219
42	4/9/03	Individual 30	\$2,219
43	4/13/03	Individual 31	\$2,219
44	4/12/03	Individual 32	\$2,219
45	4/9/03	Individual 33	\$2,219
46	3/20/03	Individual 34	\$2,149
47	3/19/03	Individual 34	\$2,136
48	3/18/03	Individual 34	\$2,399
49	4/9/03	Individual 35	\$2,219
50	4/13/03	Individual 36	\$2,219
51	4/9/03	Individual 37	\$2,219
52	4/9/03	Individual 38	\$2,219
53	4/13/03	Individual 39	\$2,219
54	4/13/03	Individual 40	\$2,219
55	4/13/03	Individual 41	\$2,219
56	4/12/03	Individual 42	\$2,219
57	4/11/03	Individual 43	\$2,219
58	4/12/03	Individual 44	\$2,219
59	4/12/03	Individual 45	\$2,219
60	4/11/03	Individual 46	\$2,219
61	3/17/03	Individual 47	\$2,149
62	3/17/03	Individual 47	\$2,192
63	3/17/03	Individual 47	\$2,418

(Title 18, United States Code, Sections 287 & 2)

COUNTS SIXTY-FOUR THROUGH SEVENTY-SIX

(Identity Theft)

The Grand Jury charges:


12. The allegations contained in paragraphs 1 through 11 are repeated, realleged and incorporated by reference as though fully set forth herein.

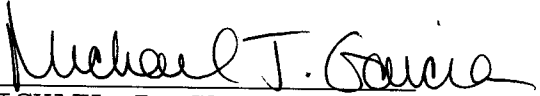
13. On or about the dates set fourth below, in the Southern District of New York, and elsewhere, the defendant, BERNARDO A. APONTE, without lawful authority, did knowingly use, and did aid and abet the use of, a means of identification of other persons, to wit, the names and social security numbers of the individuals listed below, with the intent to commit unlawful activities that constitute violations of Federal law, to wit, the filing of false and fraudulent claims, and aiding and abetting in the filing of fraudulent claims, with an agency of the United States in violation of 18 U.S.C. §§ 287 and 2, with the said means of identification having been transported in the mail in the course of such use:

<u>COUNT</u>	<u>NAME ON TAX RETURN MAILED TO IRS</u>	<u>DATE MAILED</u>	<u>MEANS OF IDENTIFICATION USED WITHOUT LAWFUL AUTHORITY</u>	<u>FALSE REFUND CLAIMED</u>
64	Individual 1	4/9/03	Name/Social Security Number	\$2,219
65	Individual 1	11/18/03	Name/Social Security Number	\$2,505

<u>COUNT</u>	<u>NAME ON TAX RETURN MAILED TO IRS</u>	<u>DATE MAILED</u>	<u>MEANS OF IDENTIFICATION USED WITHOUT LAWFUL AUTHORITY</u>	<u>FALSE REFUND CLAIMED</u>
65	Individual 13	3/8/03	Name/Social Security Number	\$1,365
67	Individual 13	11/21/03	Name/Social Security Number	\$1,365
68	Individual 17	4/10/03	Name/Social Security Number	\$2,219
69	Individual 4	4/13/03	Name/Social Security Number	\$2,219
70	Individual 6	4/13/03	Name/Social Security Number	\$2,219
71	Individual 19	4/10/03	Name/Social Security Number	\$2,219
72	Individual 5	4/9/03	Name/Social Security Number	\$2,219
73	Individual 12	4/9/03	Name/Social Security Number	\$2,219
74	Individual 15	4/10/03	Name/Social Security Number	\$2,219
75	Individual 18	4/11/03	Name/Social Security Number	\$2,219
76	Individual 22	3/7/03	Name/Social Security Number	\$2,297

(Title 18, United States Code, Sections 1028(a)(7) & 2)


FOREPERSON


MICHAEL J. GARCIA
United States Attorney

Form No. USA-33s-274 (Ed. 9-25-58)

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

UNITED STATES OF AMERICA

- v -

BERNARDO A. APONTE,

Defendant.

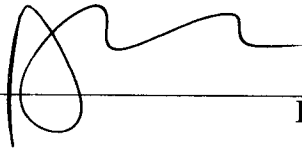
INDICTMENT

06 Cr.

[18 U.S.C. §§ 287 and 2]
[18 U.S.C. §§ 1028(a)(7) and 2]

MICHAEL J. GARCIA
United States Attorney.

A TRUE BILL



Foreperson.
